IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 7600 of 2000

with

CRIMINAL MISC.APPLICATION No 7609 to 7611 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MUKESH R KAMALI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 7600 of 2000

MR JB PARDIWALA for Petitioner

MR HL JANI, APP, for Respondent No. 1

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 26/12/2000

ORAL JUDGEMENT

Heard learned advocate Mr JB Pardiwala for thepetitioner and Mr H.L. Jani, learned APP, for the respondents in each of the matters.

2 As common questions of law and fact are involved in the above said three matters, all the matters are taken up for hearing together and are being disposed of by this common order.

3 The petitioner of Criminal Misc. Application No.7600 of 2000 has contended that a FIR bearing CR No.58 of 2000 has been registered at Atul Police Station against one Subhashbhai Hirabhai for the offences made punishable under Sections 66(1)(b), 65(e), 61 (b) of the Bombay Prohibition Act, 1949 ("Act" for short) with the allegation that on 6th July 2000 accused Subhashbhai Hirabhai was proceeding in a Fiat Car bearing Registration No.GJC 5149 near Diwede Railway Crossing in a suspicious manner and as such PSI Shri V.A. Patel who was patrolling with his staff stopped the car and carried out the search. That during the search he found Indian Made Foreign Liquor worth Rs.47,400/-. That the said bottles of liquor was seized after taking sample and crime was registered.

It is contended by the petitioner that though there is no allegation against the petitioner in the FIR, the Investigation Officer has obtained the statement of the accused and on the alleged statement of the accused Subhashbhai Hirabhai has involved the present petitioner who has been running a liquor bar at Daman. It is contended by the petitioner that accused has stated to the Police Office that he purchased the said liquor from the present petitioner and brought within the territory of Gujarat at the instance of the petitioner. The petitioner has challenged the said FIR in the present proceedings.

4 The petitioner of Criminal Misc. Application No.7609 of 2000 has challenged the criminal prosecution initiated vide CR No.238 of 2000 registered at Pardi Police Station against one Yashwantbhai Barasubhai Chaudhary for the offence made punishable under Sections 66(1)(b), 65(a)(1) of the Act.

The allegation contained in the FIR suggests that one unarmed Police Constable, Hasmukh Guman, was on patrolling duty at village Udhwada on National Highway Road N.8 and he found a cyclist proceeding on the road

near horticultural land in a suspicious manner. The said cyclist was stopped and on search it was found that Indian Made Foreign Liquor covered in a clothe was found on the carrier of the bicycle. The said material being prohibited material under the Act the cyclist was arrested and the crime was registered. It is contended by the petitioner that the Investigation Officer has obtained the statement of the said accused no.1 Yashwant Barasubhai Chaudhary and on the basis of the said statement has involved the petitioner in the said matter and hence to challenge the said proceedings the present petition is filed.

4 The petitioner of Criminal Misc. Application No.7610 of 2000 has contended that a FIR bearing CR No.III 368 of 2000 has been registered at Pardi Police Station against one Dinkarbhai Danjibhai, Revantiben Motilal and the petitioner for the offences made punishable under Sections 66(1)(b), 65(a)(e), 81, 116 (2) of the Bombay Prohibition Act, 1949 with the allegation that on 3rd November 2000 the Sr. PSI Shri S.S.Barot while he was on patrolling duty received an intelligence report that one Maruti Van bearng registration no.GJ-15-K-2477 is to illegally transport Indian Made Foreign Liquor manufactured at Daman near village Teralav. That thereby PSI along with his staff arranged a blockade on the road and when the said Maruti Van came there it was stopped and searched. During the search inall 1304 bottles of Indian Made Foreign Liquor was found. That the said bottles of liquor was seized after taking sample and crime was registered.

It is contended by the petitioner that though he is not involved inthe offence alleged in the said FIR, hisname is falsely stated therein and hence the present petition.

5 The petitioner of Criminal Misc. Application No.7611 of 2000 has challenged the criminal prosecution initiated vide CR No.237 of 2000 registered at Pardi Police Station against one Umesh Kakadbhai Chakala and the petitioner for the alleged offences made punishable under Sections 66(1)(b), 65(a)(1) and 81 of the Act.

The allegation contained in the FIR suggests that ASI - Pravinbhai Visabhai, was on patrolling duty on 16.8.2000 at village Udhwada on National Highway Road N.8 and he found a cyclist proceeding on the road near in a suspicious manner. The said cyclist was stopped and on search it was found that Indian Made Foreign Liquor covered in a clothe was found on the carrier of the

bicycle. The said material being prohibited material under the Act the cyclist was arrested and the crime was registered. It is contended by the petitioner that though there is no allegation in the FIR and no material to reasonably infer involvement of the petitioner in the offences alleged therein, the petitioner is falsely implicated and hence the petition.

6 Initially, vide earlier order dated 20.12.2000 urgent show-cause ntoice was issued and the learned APP was directed to keep the Investigation Officer present with all the relevant papers in respect to the criminal matters relating to above said petitions. Today the investigation officer is present and the learned APP has stated at Bar on instructions that in all the four matters the investigation has been completed and the charge sheets have been filed in the approrpriate Court. However, there is no material from which the petitioner of all the above stated matters could be said to have been involved in the offences alleged against the petitioner in each of the matters either having committed the same or abetted the same. In view of the said fact, the allegation made by the petitioner in each of the petitions have remained unrebutted and further prosecution of the petitioner of the said proceedings cannot be permitted as it would amount to abuse of process of law. Hence the following operative order:-

The respective FIR and subsequent criminal prosecution on the basis of said FIR against the respective petitioner of the above stated matters is hereby quashed and set aside qua the petitioner only. Rule to that extent made absolute. No order as to costs.

(A K TRIVEDI J.)

(mohd)